

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

U.S. BANK NATIONAL ASSOCIATION, in  
its capacity as Trustee, JOSHUA N. TERRY,  
and ACIS CAPITAL MANAGEMENT, L.P.,

*Plaintiffs,*

v.

THE CHARITABLE DONOR ADVISED  
FUND, L.P., CLO HOLDCO LTD., and  
NEXPOINT DIVERSIFIED REAL ESTATE  
TRUST,

*Defendants.*

Case No. 1:21-cv-11059-GHW

**NOTICE OF PLAINTIFFS' MOTION  
TO DISMISS DEFENDANTS'  
COUNTERCLAIMS AND FOR  
JUDGMENT ON THE PLEADINGS**

**ORAL ARGUMENT REQUESTED**

PLEASE TAKE NOTICE that Plaintiffs U.S. Bank, National Association, in its capacity as trustee (“U.S. Bank” or the “Trustee”), Joshua N. Terry (“Mr. Terry”), and Acis Capital Management, L.P. (“ACM” or the “Portfolio Manager” and, collectively with the Trustee and Mr. Terry, “Plaintiffs”), by and through their undersigned counsel, will move this Court, at a date and time to be determined by the Court, for (1) an order dismissing in their entirety with prejudice the counterclaims brought by Defendants The Charitable Donor Advised Fund, L.P., CLO HoldCo, Ltd., and NexPoint Diversified Real Estate Trust under Rule 12(b)(6) of the Federal Rules of Civil Procedure, and (2) for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure on Plaintiffs’ Claims in the Amended Complaint. This Motion is based on the accompanying Plaintiffs’ Memorandum of Law in Support of Their Motion to Dismiss Defendants’ Counterclaims and for Judgment on the Pleadings on Plaintiffs, and the Declarations

of Blair A. Adams, Jonathon Milne and Todd McGuffin, each dated May 15, 2022, and with exhibits thereto.

Dated: New York, New York  
May 15, 2023

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*Attorneys for Plaintiff U.S. Bank National  
Association, in its capacity as Trustee*

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that on May 15, 2023, he caused a true copy of the foregoing document to be served via CM/ECF to all counsel of record.

/s/ Misha Boutilier  
Misha Boutilier